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BY HAND

September 15, 1995

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

RECEIVED

SEP 15 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: MM Docket No. 94-34

Dear Mr. Caton:

Please insert the attached letter in the record of MM Docket No. 94-34. In addition to Chairman Hundt, this letter has been sent to Commissioners Quello, Barrett, Chong and Ness, as well as Roy Stewart, Chief, Mass Media Bureau, and General Counsel William Kennard.

If you have questions regarding this matter, please contact me.

Sincerely,

Terry Etter  
Staff Attorney

Attachment

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September 15, 1995

**Hand Delivered**

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W. - Room 814  
Washington, D.C. 20554

**RECEIVED**  
**SEP 15 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Re: Proceedings in MM Docket No. 94-34**

Dear Chairman Hundt:

The broadcasting industry remains opposed to discrimination in any form and committed to diversity in the workplace. Broadcasters realize that by hiring minorities and women in key positions, their stations are more in tune with community needs and their listeners and advertisers can better relate to their stations. In other words, diversity in the workplace is just good business. Broadcasters have recruited and hired minorities and women, and will continue to do so, even in the absence of Commission rules.

However, the National Association of Broadcasters ("NAB") is deeply concerned about the Commission's equal employment opportunity rules and policies. The current EEO enforcement mechanism unduly emphasizes efforts over results, and provides broadcasters and Commission staff alike with little clear guidance regarding how a station may be in compliance with the EEO rules.<sup>1</sup>

In this regard, the Commission has had an EEO inquiry in MM Docket 94-34 outstanding for more than 15 months, but still has not issued a Notice of Proposed Rule Making on the subject. NAB, therefore, respectfully requests that the Commission expedite its rulemaking in this docket.

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<sup>1</sup> During the past few months, NAB staff have been involved in a series of meetings with staff from the Minority Media and Telecommunications Council in order to determine whether common ground might be found on recommendations to the FCC in MM Docket 94-34. NAB expects these discussions to continue.

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Already, radio stations in two renewal groups — covering five states and the District of Columbia — have filed their renewal applications, and the next renewal cycle for television stations begins next year. Without clear guidance as to what the Commission expects from licensees' EEO efforts, and how compliance will be reviewed, licensees face great uncertainty as to their prospects for renewal. During the last renewal cycle, some radio renewals were delayed up to five years because the Commission staff had no clear guidelines regarding enforcement of the Commission's EEO rules. This, in turn, places undue restraints on broadcasters' future business plans and their ability to serve the public.

On August 18, 1995, the law firm Haley, Bader & Potts ("HBP") petitioned the Commission for a rulemaking to examine its EEO rules in light of the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, \_\_\_ U.S. \_\_\_, 115 S.Ct. 2097 (1995). The HBP Petition asserts that *Adarand* may call into question the basis for the Commission's EEO rules, i.e., the diversity of the broadcast workplace. NAB agrees that the Commission must examine the constitutionality of its EEO rules and policies in light of *Adarand* and make appropriate changes where necessary.

In addition, NAB again urges the Commission to discard the current review process, which focuses almost exclusively on the station's efforts to attract minority and female applicants, in favor of a process which is more result-oriented. Moreover, the Commission should provide relief for small broadcasters by raising the threshold for EEO recordkeeping to stations with 20 employees.

It is imperative that the Commission promptly issue a proposed rule in this docket. NAB urges the Commission to expedite this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Baumann", with a long horizontal line extending to the right.

Henry L. Baumann  
Executive Vice President & General Counsel